

BOARD OF REVIEW DECISION

Title of Publication: "B"

Other Known Title: "Cellphone Photograph"

Medium: CD-ROM (film)

Director/Author: Not Applicable

Producer/Publisher: Not Applicable

Country of Origin: New Zealand

Language: English

Applicant: KA

Distributor: Not Applicable

Classification:	Objectionable.
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Descriptive Note: Not Applicable

Display Conditions: Not Applicable

Date of entry in Register: 03 October 2008

Date of direction to issue a label: Not Applicable

OFLC No: 801925

Unexcised version of publication:

	Components	Running time
Timed Components	MOV00006	0.09
	MOV00007	0.11
Total running time:		0.20

Excisions: Not Applicable

Reasons for excisions:

Not Applicable

**Summary of reasons
for classification:****SUMMARY OF REASONS FOR DECISION:****Section 3(1) of the Films, Videos, and Publications Classification Act 1993**

With respect to section 3(1) of the Act, the Film and Literature Board of Review (the Board) finds that “B” or “*The Cellphone Photograph*” passes through the gateway of sex. In the publication sex is depicted by the concentration of the camera on the child’s genitals at close range. The proximity of the male adult hand to her genitalia is a further factor relating to sex.

Counsel for KA provided a competent assessment of her client’s reasons for producing the publication. Neither of these reasons show on the face of the publication. There is no indication on the publication as to what use it was to be put to. As the Office of Film and Literature Classification (OFLC) states in its submission, there are certainly more suitable ways of providing evidence of alleged sexual abuse to the police.

The Board considers “B” as being injurious to the public good unless restricted, based on the fact that the publication concentrates on a child’s genitalia. There is no indication on the face of the publication as to the purpose for which KA alleges the publication was made. The publication is therefore abusive of the child. The presence of an adult male hand close to the child’s genitalia is a factor which on the face of it “is injurious to the public good”.

Section 3(1A)

Section 3(1A) of the Act requires that the publication contains one or more visual images of a child who is nude, or partially nude, and that those images, together with any other content of the publication, are reasonably capable of being regarded as sexual in nature.

In respect of “B”, the images are very largely of a child’s genitalia. The factors which the Board finds make the images reasonably capable of being regarded as sexual in nature include the close-up shots of the child’s genitalia and the proximity of the male adult hand to the genitalia, particularly when the finger points as if to touch. Such images promote the view that children are sexually available to men.

Section 3(2)

This section of the Act is commonly known as the deeming provision. If a publication promotes or supports, or tends to promote or support, one or more of the activities described in subclauses (a) to (f), then the publication is deemed to be objectionable.

The Board considers that section 3(2)(a) is applicable to “B”. That section states that a publication will be deemed objectionable if it promotes or supports, or tends to promote or support, “the exploitation of children, or young persons, or both, for sexual purposes”.

The Board finds there is concentration for a large majority of the publication on a young female's genitalia. The existence of a male adult hand nearby which is pointing or perhaps moving to touch the child's genitalia is an added factor.

On the face of it, there is no indication of the purpose for which this publication was made. In these circumstances, the Board would have expected a medical examination of a child of this age. On the face of the publication, it is an explicit display of a child's genitalia which is portrayed as being accessible to adults by the presence of the adult male hand.

The Board accepts the OFLC's submission that "a fair reading of both publications [*The 'Untitled Bedroom Scene'* and "B"] is that they normalize the idea that adult control over children confers the right to sexual access. If, as the Court of Appeal has said 'the legislation is concerned with the vulnerability of young people and with the corrosive injury to the public good of depicting persons perceived to be children or young people as subjects of exploitation', then classifying them as objectionable 'will minimise the injury to the public good that the availability of these publications is likely to cause'".

The Board has to consider whether the existence of the publication promotes or supports the exploitation of children for sexual purposes. The Board finds that "B" falls within section 3(2)(a) in that promotion or support, or tendency to promote or support the exploitation of a child for sexual purposes is established by the close-up images of the child's pubis and labia with the adult hand close enough to touch the genitals.

The Bill of Rights Act 1990

The Bill of Rights Act 1990 and the 5-step process in *Moonen I* were applied in making this decision.